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FILED

Date 10/6/15 By *Susan Saylor*

8
9 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2016-21

12 **BUGMAC**
13 7900 Limonite Avenue, Suite G303
14 Riverside, CA 92509

A C C U S A T I O N

15 **Company Registration Certificate**
No. PR 5848, Branch 3

16 **RONY MacDONALD**
17 7900 Limonite Avenue, Suite G303
Riverside, CA 92509

18 **Operator's License No. OPR 10966,**
19 **Branch 3**

20 Respondents.

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22 Complainant alleges:

23 **PARTIES**

24 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as
25 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
26 Affairs.

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1 2. On or about May 20, 2009, the Structural Pest Control Board (Board) issued
2 Company Registration Certificate Number PR 5848 (PR 5848), Branch 3, to Bugmac, with Rony
3 MacDonald as Owner and Qualifying Manager (Respondents), with an address of 8304 Limonite
4 Avenue, Unit 101, Riverside, CA 92509. On November 30, 2011, PR 5848 reflected a change of
5 mailing address to 7900 Limonite Avenue, Suite G303, Riverside, CA 92509, with a business
6 address of 8304 Limonite Avenue, Unit 101, Riverside, CA 92509. On January 6, 2012, PR 5848
7 was suspended for failure to maintain general liability insurance as required by section 8690 of
8 the Business and Professions Code (Code). On January 10, 2012, PR 5848 was reinstated after
9 posting the required general liability insurance. On May 8, 2015, PR 5848 was suspended for
10 failure to maintain general liability insurance as required by Code section 8690. On May 12,
11 2015, PR 5848 was reinstated after posting the required general liability insurance. The
12 registration was in full force and effect at all times relevant to the charges brought herein.

13 3. On or about September 13, 2004, the Structural Pest Control Board issued Operator's
14 License Number OPR 10966 (OPR 10966), Branch 3 to Rony MacDonald (Respondent), as an
15 employee of J R Holmes, Inc., dba Bugmasters of Buena Park (J R Holmes). On or about
16 April 11, 2005, OPR 10966 became the branch office supervisor of J R Holmes. On April 1,
17 2009, OPR 10966 left the employment of J R Holmes, was placed on inactive status, and
18 reflected a change of address to 8304 Limonite, Unit 101, Riverside, CA 92509. On May 20,
19 2009, OPR 10966 became the Owner and Qualifying Manager of Bugmac, with an address of
20 8304 Limonite, Unit 101, Riverside, CA 92509. On February 19, 2010, OPR 10966 reflected
21 dual employment and became employed with Get Out Termite Control, with an address of 321
22 Wellesley Drive, Unit #104, Corona, CA 92879. On April 14, 2010, OPR 10966 reflected a
23 change of business address to 9360 Summerstone Court, Riverside, CA 92508. On July 28, 2010,
24 OPR 10966 reflected a change of mailing address to 7207 Arlington Avenue, Unit J, Riverside,
25 CA 92503. On November 12, 2010, OPR 10966 reflected a change of business address to 47795
26 Dune Palms Road, Unit #5211, La Quinta, CA 92253. On September 13, 2011, OPR 10966
27 reflected a change of business address to 7450 Northrop Drive, Unit #94, Riverside, CA 92508.
28 On November 30, 2011, OPR 10966 reflected a change of business address to 8304 Limonite

1 Avenue, Unit 101, Riverside, CA 92509, and a change of mailing address to 7900 Limonite
2 Avenue, Suite G303, Riverside, CA 92509. On January 6, 2012, Operator's License No. OPR
3 10966 was suspended for failure to maintain general liability insurance as required by Code
4 section 8690. On January 10, 2012, OPR 10966 was reinstated after posting the required general
5 liability insurance. On January 26, 2015, OPR 10966 left the employment of Get Out Termite
6 Control due to cancelation of the company registration. On May 8, 2015, OPR 10966 was
7 suspended for failure to maintain general liability insurance as required by Code section 8690.
8 On May 12, 2015, OPR 10966 was reinstated after posting the required general liability
9 insurance. Operator's License No. OPR 10966 was in full force and effect at all times relevant to
10 the charges brought herein and will expire on June 30, 2016.

11 JURISDICTION

12 4. This Accusation is brought before the Board, under the authority of the following
13 laws. All section references are to the Business and Professions Code unless otherwise indicated.

14 5. Section 118, subdivision (b) provides that the suspension, expiration, surrender and/or
15 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
16 action during the period within which the license may be renewed, restored, reissued or
17 reinstated.

18 6. Section 8620 authorizes the Board to suspend or permanently revoke a license when
19 it finds that the holder, while a licensee or applicant, has committed any acts or omissions
20 constituting grounds for disciplinary action. Pursuant to subsection (a), if a licensee elects to
21 stipulate to a disciplinary action prior to an administrative hearing, the Board may impose a civil
22 penalty, in lieu of a suspension.

23 7. Section 8625 states:

24 The lapsing or suspension of a license or company registration by
25 operation of law or by order or decision of the board or a court of law, or the
26 voluntary surrender of a license or company registration shall not deprive the board of
27 jurisdiction to proceed with any investigation of or action or disciplinary proceeding
28 against such licensee or company, or to render a decision suspending or revoking
such license or registration.

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STATUTORY PROVISIONS

8. Section 8516 of the Code states:

(a) This section, and Section 8519, apply only to wood destroying pests or organisms.

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to this subdivision or Section 8518 shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8518 or this section is grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars (\$2,500).

A written inspection report conforming to this section and a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, field notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth on the report:"

....

(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.

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1 9. Section 8518 of the Code states:

2 (a) When a registered company completes work under a contract, it
3 shall prepare, on a form prescribed by the board, a notice of work completed and not
4 completed, and shall furnish that notice to the owner of the property or the owner's
agent within 10 business days after completing the work. The notice shall include a
statement of the cost of the work and estimated cost of work not completed.

5 10. Section 8613 of the Code states:

6 A registered company which changes the location of its principal office or
7 any branch office or which changes its qualifying manager, branch supervisor,
officers, or its bond or insurance shall notify the registrar on a form prescribed by the
8 board of that change within 30 days thereafter. A fee for filing those changes shall be
charged in accordance with Section 8674.

9 11. Section 8622 of the Code states:

10 When a complaint is accepted for investigation of a registered company,
11 the board, through an authorized representative, may inspect any or all properties on
12 which a report has been issued pursuant to Section 8516 or a notice of completion has
13 been issued pursuant to Section 8518 by the registered company to determine
14 compliance with the provisions of this chapter and the rule and regulations issued
15 thereunder. If the board determines the property or properties are not in compliance,
16 a notice shall be sent to the registered company so stating. The registered company
17 shall have 30 days from the receipt of the notice to bring such property into
compliance, unless an extension is authorized by the board, and it shall submit a new
original report or completion notice or both and an inspection fee of not more than
one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent
reinspection is necessary, pursuant to the board's review of the new original report or
notice or both, a commensurate reinspection fee shall also be charged. If the board's
authorized representative makes no determination or determines the property is in
compliance, no inspection fee shall be charged.

18 12. Section 8638 of the Code states:

19 Failure on the part of a registered company to complete any operation or
20 construction repairs for the price stated in the contract for such operation or
21 constructions repairs or in any modification of such contract is a ground for
disciplinary action.

22 13. Section 8641 of the Code states:

23 Failure to comply with the provisions of this chapter, or any rule or
24 regulation adopted by the board, or the furnishing of a report of inspection without
25 the making of a bona fide inspection of the premises for wood-destroying pests or
organisms, or furnishing a notice of work completed prior to the completion of the
work specified in the contract, is a ground for disciplinary action.

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1 14. Section 8650(b) of the Code states:

2 Acting in the capacity of a licensee or registered company under any of
3 the licenses or registrations issued hereunder except:

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5 (b) At the address and location or place or places of business as licensed
6 or registered or as later changed as provided in this chapter is a ground for
disciplinary action.

7 REGULATORY PROVISIONS

8 15. California Code of Regulations, title 16, section 1937.14, states:

9 All work completed by licensees or registered companies shall be done
10 within the specific requirements of any plans or specifications and shall meet
11 accepted trade standards for good and workmanlike construction in any material
12 respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of
Title 24, California Code of Regulations.

13 16. California Code of Regulations, title 16, section 1990, states:

14 (a) All reports shall be completed as prescribed by the board. Copies
15 filed with the board shall be clear and legible. All reports must supply the information
16 required by Section 8516 of the Code and the information regarding the pesticide or
17 pesticides used as set forth in Section 8538 of the Code, and shall contain or describe
the following:

18

19 (3) Infestations, infections or evidence thereof.

20 (4) Wood members found to be damaged by wood destroying pests or
21 organisms.

22 (b) Conditions usually deemed likely to lead to infestation or infection
23 include, but are not limited to:

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25 (3) Excessive Cellulose Debris. This is defined as any cellulose debris of
26 a size that can be raked or larger. Stumps and wood imbedded in footings in earth
27 contact shall be reported.

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(c) When an infestation of carpenter ants or carpenter bees is found in a
structure, control measures may be applied by companies holding a Branch 2 or
Branch 3 registration certificate. If a Branch 3 licensee discovers an infestation or
evidence of carpenter ant or carpenter bee infestation while performing an inspection
pursuant to section 8516 of the code, he or she shall report his or her findings and
make recommendations for controlling the infestation.

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1 (3) All work completed by licensees or registered companies shall be
2 done within the specific requirements of any plans or specifications and shall meet
3 accepted trade standards for good and workmanlike construction in any material
4 respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of
5 Title 24, California Code of Regulations.

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7 17. California Code of Regulations, title 16, section 1996.3 states:

8 (a) The address of each property inspected and/or upon which work was
9 completed shall be reported on a form prescribed by the Board and designated as the
10 WDO Inspection and Completion Activity Report Form (see Form No. 43M-52 Rev.
11 5/09) at the end of this section. This form shall be prepared by each registered
12 company and shall comply with all of the requirements pursuant to Section 8516(b),
13 and 8518.

14 (b) The form shall contain the following information for each property
15 inspected and/or upon which work was completed.

16 (1) Company Name

17 (2) Company registration number

18 (3) Branch office registration number (when a branch office issues an
19 inspection report or notice of work completed

20 (4) Date of Activity

21 (5) Address of property inspected or upon which work was completed,
22 including zip code

23 (6) Activity Code

24 (7) License number of licensee performing the inspection.

25 (c) Failure of a registered company to report and file with the Board the
26 address of any property inspected or upon which work was completed pursuant to
27 Section 8516(b) or 8518 are grounds for disciplinary action and subject to a fine of
28 not more than two thousand five hundred dollars (\$2,500).

29 COST RECOVERY/RESTITUTION

30 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
31 administrative law judge to direct a licentiate found to have committed a violation or violations of
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
33 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
34 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
35 included in a stipulated settlement.

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19. Government Code section 11519, subdivision (d) provides, in pertinent part, that the Board may require restitution of damages suffered as a condition of probation in the event probation is ordered.

HISHMEH PROPERTY

20. On or about June 12, 2013, Rony MacDonald, Operator's License No. OPR 10966, Branch 3, owner and operator of Bugmac, Company Registration Certificate No. PR 5848, Branch 3 (Respondent), performed a WDO inspection¹ at 2220 El Capitan Drive, Riverside, California, a condominium property which is part of a 4-unit condominium building. The inspection reported evidence of drywood termite infestations at the interior attic, drywood termites at the interior of the detached garage, drywood termite damage at the side garage door, and drywood termite damage at an exterior wood balcony joist. The complete inspection report included recommendations to correct the conditions. Respondent failed to report his findings to the Board by submitting a WDO Inspection and Completion Activity Report form to the Board.

21. On or about June 18, 2013, Respondent issued a Standard Notice of Work Completed and Not Completed certifying it completed its recommendations to correct the conditions reported on its inspection report. The notice of completion certified the property was free of evidence of active infestation or infection or infestation in the visible and accessible areas. Respondent failed to report his activity to the Board by submitting the Standard Notice of Work Completed and Not Completed form to the Board.

22. On or about November 7, 2014, Robert Gjurgevich (Gjurgevich), Operator's License No. OPR 9724, owner and operator of Reconciled Termite and Pest Control (RTPC) inspected the property. RTPC reported evidence of drywood termites at "various areas" of the property and drywood termite fungus damage at a rafter tail of the detached garage and trash enclosure at the detached garage. RTPC's inspection report included a recommendation to fumigate the property and to remove and replace the drywood termite and fungus damaged wood.

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¹ A WDO inspection is a wood destroying organisms inspection.

1 23. On or about November 21, 2014, the Board received a complaint from J. C. Hishmeh
2 (Hishmeh), owner of the property, who informed the Board that RTPC found drywood termites
3 and damage that should have been treated by Respondent prior to the close of escrow, which took
4 place on July 11, 2013.

5 24. On or about December 3, 2014, a Board representative wrote a letter to Respondent
6 advising Respondent of the Complaint and allegations that Respondent failed to make a proper
7 inspection and/or write a proper report, and requested that Respondent submit a written report to
8 the Board within ten (10) days of receipt of the letter, which Respondent failed to do.

9 25. On or about March 18, 2015, a Board specialist went to the property in question,
10 reviewed the complaint with Hishmeh, and determined that numerous violations existed, as
11 follows:

12 a. Failure to report drywood termite infestations at the garage, attic and balcony of the
13 property extend into inaccessible areas, in violation of Code section 8516(b)(6) and California
14 Code of Regulations, title 16 (Regulations), section 1990(a)(3).

15 b. Failure to remove or cover accessible evidence of wood destroying pests (drywood
16 termite pellets) in the attic of the condominium and the attic of the detached garage, in violation
17 of Regulations section 1990(C)(3).

18 c. Failure to complete repairs at the balcony joist in a good and workmanlike manner
19 that would meet accepted trade standards, in violation of Code section 8638 and Regulations
20 section 1937.14.

21 d. Failure to report drywood termite damage at a balcony rafter tail, in violation of Code
22 section 8516(b)(6) and Regulations 1990(a)(4).

23 e. Failure to submit the Wood Destroying Pests and Organisms Inspection Report and
24 the Standard Notice of Work Completed and Not Completed as a Wood Destroying Pest (WDO)
25 activity, in violation of Code section 8516(b) and Regulations section 1996.3.

26 f. Failure to notify the Board that Company Registration No PR 5848 changed the
27 location of its principal office within 30 days of such change, in violation of Regulations section
28 8613.

26. On or about March 18, 2015, a Board specialist traveled to Respondent's address of record and found it to be a retail mailbox rental store. On the same date, the Board specialist traveled to Respondent's residence address and could not locate Respondent.

27. On or about March 26, 2015, the Board specialist prepared and sent via certified mail a copy of his Report of Findings to Respondent's address of record.

28. On or about April 10, 2015, the Board specialist received a signed return receipt for the certified mailing.

FIRST CAUSE FOR DISCIPLINE

(Failure to Report)

29. Respondent Bugmac's company registration certificate and Respondent Rony MacDonald's operator's license are subject to discipline under Code sections 8516 and 8518, in that on the Hishmeh property, Respondents failed to comply as follows:

- a. Respondent failed to submit to the Board a WDO inspection report.
- b. Respondent failed to submit report to the Board a Standard Notice of Work Completed.

SECOND CAUSE FOR DISCIPLINE

(Departure From Industry Standards)

30. Respondent Bugmac's company registration certificate and Respondent Rony MacDonald's operator's license are subject to discipline under Code section 8516(b)(6), 8638 and Regulation sections 1937.14 and 1990(a)(3), in that on the Hishmeh property, Respondents departed from industry standards as follows:

- a. Respondent failed to report drywood termite infestations at the garage, attic and balcony of the property extend into inaccessible areas.
- b. Respondent failed to complete repairs at the balcony joist in a good and workmanlike manner that would meet accepted trade standards.
- c. Respondent failed to remove or cover accessible evidence of wood destroying pests (drywood termite pellets) in the attic of the condominium and the attic of the detached garage.

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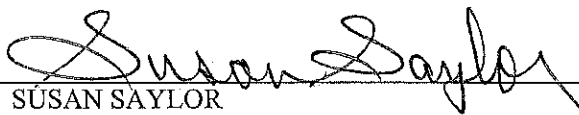
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Company Registration Certificate No. PR 5848, Branch 3, issued to Bugmac; Rony MacDonald, Owner and Qualifying Manager;
2. Revoking or suspending Operator's License Number OPR 10966, Branch 3, issued to Rony MacDonald;
3. Prohibiting Rony MacDonald from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of any registered company during the period that discipline is imposed on Operator's License Number OPR 10966;
4. Ordering restitution to property owner J. C. Hishmeh according to proof, pursuant to Government Code section 11519, subdivision (d);
5. Ordering Rony MacDonald to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
6. Taking such other and further action as deemed necessary and proper.

DATED: 10/6/15


SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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